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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,296	11/17/2003	Steven M. Weinzierl	16623	5217
4859	7590	11/17/2004	EXAMINER	
MACMILLAN SOBANSKI & TODD, LLC ONE MARITIME PLAZA FOURTH FLOOR 720 WATER STREET TOLEDO, OH 43604-1619			LUM VANNUCCI, LEE SIN YEE	
			ART UNIT	PAPER NUMBER
			3611	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/715,296

Applicant(s)

WEINZIERL, STEVEN M.

Examiner

Lee Lum

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the following claims in U.S. Patent No. 6651765:

a. Claims 1 and 2 of the present application recites, *inter alia*, "a snow/ice retention area", and causing the snow/ice to be propelled into this area, both limitations recited in Claim 1.

Claims 1-3 and 5 of the patent calls for this same invention, the difference being that (broader) independent Claim 1 does not recite the retention area, nor "causing snow/ice to be propelled into [this area]", whereas Claim 5 does contain these limitations. (That is, Claim 1 of the present application is narrower than Claim 1 of the patent, but the inventions are identical.)

With respect to the present application, it would have been obvious to include a "retention area" for the step of "locating snow/ice on a heat exchanger" because the former is necessary to effect the latter function. Likewise, it would have been obvious to "cause snow/ice to be propelled into [this area]" to effect the function of "passing ram air through...the snow/ice".

b. Claims 3-5 of the present application includes, *inter alia*, two heat exchangers, monitoring operating conditions of the engine, and injecting the intercooler liquid into an air intake assembly.

Claims 6-10 of the patent describes the same invention, the difference being that (broader) Claim 6 does not recite the last two limitations, these being included in Claim 9. (That is, Claim 3 of the present application is narrower than Claim 6 of the patent, but the inventions are identical.)

With respect to the present application, it would have been obvious to include the last two limitations to provide proper operation of the cooling system since it involves two heat exchangers, as well as passage of liquid and air. Monitoring of engine conditions would have been obvious to assist in these functions so to maximize proper operation of the complicated cooling system.

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c. Claim 6 of the present application recites the exact same invention as that in Claim 14 of the patent; a snowmobile comprising, *inter alia*, an air charging system, an intercooler system, and a screen for the intercooler opening.

d. Claims 6 and 7 of the present application recites the same invention as that in Claims 11 and 12 of the patent, except Claim 6 includes a screen. It would have been obvious to include this element to filter at least a portion of the debris in the propelled snow/ice.

e. Claims 6 and 8 of the present application recites the same invention as that in Claim 13 of the patent, the difference being that Claim 6 does not include "a flap", this element recited instead in Claim 8. However, the inventions are identical.

With respect to the present application, it would have been obvious to include this element to repel some of the debris, etc. from entering the heat exchanger.

f. Claims 6 and 9 of the present application recites the same invention as that in Claim 15 of the patent, the difference being that Claim 6 does not include "a ram air duct". It would have been obvious to include this well-known element to assist the air charging system.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

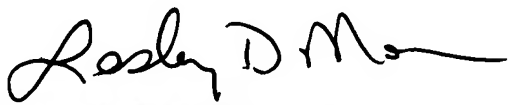
Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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2. Communication with USPTO/Examiner

Any inquiry concerning this communication, or others, should be directed to Ms. Lum at 703 305-0232, M-F, 9-6. If attempts to reach the examiner are unsuccessful, her supervisor, Ms. Lesley Morris is at 703 308-0629. Our fax number is 703 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications: private PAIR only, for published applications: private or public PAIR. For more information re PAIR: <http://pair-direct.uspto.gov>. Questions re private PAIR: contact the Electronic Business Center (EBC) at 866 217-9197.


LESLEY D. MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Ms. Lee S. Lum
Examiner
11/10/04

